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Date:

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Distributing 2 =

Distributing 1 =

Controlled 2 =

Controlled 1 =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

FSub 1 =

FSub 2 =

FSub 3 =

FSub 4 =

FSub 5 =

FSub 6 =

FSub 7 =

FSub 8 =

FSub 9 =

FSub 10 =

FSub 11 =

FSub 12 =

Business A =

Business B =

Business C =

Year =

A =

B =

C =

D =

E =

Country 1 =

Country 2 =

State =

Regulations =

Activities =

Dear _____ :

This letter responds to your February 16 request for rulings on certain federal income tax consequences of the Proposed Transactions (as defined below). The information provided in that request and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether each Distribution (defined below): (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the distribution of earnings and profits of the distributing corporation or the controlled corporation or both (§ 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (§ 355(e) and § 1.355-7).

Summary of Facts

Distributing 2 is a Country 1 corporation that is the parent of a corporate group that includes domestic and foreign corporations engaged in Business A, Business B, and Business C.

Distributing 2 owns A percent of FSub 1. FSub 1 wholly owns Distributing 1, a State corporation. Distributing 1 is the common parent of an affiliated group of corporations that files a consolidated return for Federal income tax purposes (the "Distributing 1 Group").

Certain members of the Distributing 1 Group conduct Business A and Business B. Distributing 1 wholly owns Sub 1, which wholly owns Sub 2. Sub 2 wholly owns Subs 3 and 4, as well as Sub 6. Sub 4 wholly owns FSub 12. Sub 4, Sub 6, and certain of their subsidiaries conduct Business A in their capacities as members of the Distributing 1 separate affiliated group (or SAG, as defined in § 355(b)(3)(B)). Distributing 1 will rely on Business A for its active trade or business upon the Internal Distribution (see below), and Controlled 2 will rely on Business A for its active trade or business upon the External Distribution (see below). In concert with other entities that Sub 2 owns, Sub 3 conducts Business B, both directly and indirectly via interests in joint ventures.

Distributing 1 wholly owns Sub 5, which is treated under Treas. Reg. § 301.7701-3 as an entity disregarded as separate from its sole shareholder for federal income tax

purposes. Sub 5 and subsidiaries that it owns directly and indirectly conduct Business C domestically. Upon the Internal Contribution and Distribution (below), Sub 5 and its subsidiaries will be members of the Controlled 1 SAG and will conduct Business C domestically, which Controlled 1 will rely upon for its active trade or business after the Internal Distribution, and which Distributing 2 will rely upon for its active trade or business after the External Distribution (see below).

Distributing 2 wholly owns FSub 2. FSub 2 wholly owns each of FSubs 10 and 11.

Distributing 2 wholly owns FSub 3, which conducts Business C outside the U.S., through a network of domestic and foreign subsidiaries and via joint ventures. FSub 3 owns the balance of the shares in FSub 1 that Distributing 2 does not own. FSub 3 wholly owns FSub 9.

Distributing 2 wholly owns FSub 4. FSub 4 wholly owns each of FSubs 6, 7, and 8.

Distributing 2 wholly owns FSub 5.

The taxpayer has submitted financial information substantiating that members of the Distributing 1 and Controlled 1 SAGs, as identified above, have conducted Business A and Business C, respectively, as active trades or businesses for each of the past five years.

The taxpayer represents that the Proposed Transactions will separate Businesses A and B from Business C for enumerated corporate business purposes.

Proposed Transactions

Distributing 2 has undertaken some of, and otherwise proposes to undertake, the following:

- (i) Sub 2 will change its name.
- (ii) Distributing 2 will form Controlled 2 under the laws of State. Controlled 2 will file documents with the Securities and Exchange Commission, but will engage in no other activity before the Controlled 2 Reincorporation (see Step xxxii below).
- (iii) FSub 8 will amalgamate with FSub 7.
- (iv) Distributing 2 will contribute minimum capital to a newly formed Country 2 subsidiary in exchange for all of that subsidiary's stock.

- (v) Sub 1 will transfer to Sub 2 certain assets and liabilities associated with the Sub 2 pension plans, as well as any other assets and liabilities that relate to Businesses A or B.
- (vi) FSub 3 will distribute its stock interest in FSub 1 to Distributing 2.
- (vii) FSub 1 will distribute its assets to Distributing 2 in liquidation and dissolve (the "FSub 1 Liquidation"). This will transfer ownership of the Distributing 1 stock to Distributing 2.
- (viii) FSub 3 will issue a promissory note to Distributing 2 in the amount of approximately \$B (the "Note"). The Note will have a term of C years and will bear a market rate of interest.
- (ix) Distributing 2 will contribute the Note to Distributing 1 in constructive exchange for additional Distributing 1 stock (the "Note Contribution").
- (x) Distributing 1 will contribute the Note to Sub 1.
- (xi) Sub 1 will transfer the Note and approximately \$D to FSub 5 in satisfaction of an intercompany debt.
- (xii) Any intercompany balance existing between an entity that will be a member of the Distributing 1 SAG immediately following the Internal Distribution and an entity that will be a member of the Controlled 1 SAG immediately following the Internal Distribution will be settled before the Internal Distribution (described below in Step xxx).
- (xiii) Sub 1 will convert, under applicable State law, to a limited liability company that is disregarded as separate from its owner, Distributing 1. As part of the conversion, Sub 1 will change its name (the "Sub 1 Conversion").
- (xiv) Sub 1 will distribute the stock of Sub 2 to Distributing 1.
- (xv) Distributing 1 will contribute its interests in Sub 1 and Sub 5 to newly formed Controlled 1 in exchange for all of the Controlled 1 stock and the assumption by Controlled 1 of related liabilities (the "Internal Contribution").
- (xvi) FSub 9 will borrow approximately \$D from FSub 5 and will transfer that amount to FSub 12 to satisfy an outstanding payable.
- (xvii) FSub 2 will distribute all the stock of FSub 10 and FSub 11 to Distributing 2.

- (xviii) Distributing 2 will contribute the stock of FSub 10 and FSub 11 to Distributing 1 (the "Stock Contribution").
- (xix) Distributing 1 will contribute the stock of FSub 10 and FSub 11 to Sub 2.
- (xx) Sub 2 will contribute the stock of FSub 10 and FSub 11 to Sub 4.
- (xxi) FSub 4 will elect to become a disregarded entity.
- (xxii) FSub 7 will elect to become a disregarded entity.
- (xxiii) FSub 7 will transfer to FSub 6 all of the assets and liabilities that relate to Business C, but will retain any assets and liabilities that relate to Businesses A or B.
- (xxiv) FSub 4 will distribute the FSub 7 stock to Distributing 2.
- (xxv) Distributing 2 will contribute the FSub 7 stock to Distributing 1. With the Note Contribution and the Stock Contribution, this step will complete the "Asset Contributions".
- (xxvi) Distributing 1 will contribute the FSub 7 stock to Sub 2.
- (xxvii) Sub 2 will contribute the FSub 7 stock to Sub 4.
- (xxviii) Any ELA existing in the stock of Controlled 1 or its subsidiaries will be eliminated by one or more capital contributions before the Internal Distribution (described below in Step xxx).
- (xxix) Sub 2 will distribute up to \$E in cash to Distributing 1, and Distributing 1 will contribute the cash to Controlled 1.
- (xxx) Distributing 1 will distribute the Controlled 1 stock to Distributing 2 (the "Internal Distribution").
- (xxxi) Distributing 2 will contribute the Controlled 1 stock to the newly formed Country 2 subsidiary (see Step iv).
- (xxxii) Distributing 1 will merge with and into newly formed Controlled 2 (see Step ii) with Controlled 2 surviving (the "Controlled 2 Reincorporation").
- (xxxiii) In connection with the Controlled 2 Reincorporation, the Controlled 2 stock will be subdivided and converted into that number of shares of Controlled 2 stock necessary to effect the pro rata distribution by Distributing 2 of

Controlled 2 stock to the Distributing 2 shareholders, *i.e.*, the “Recapitalization” and the “External Distribution”.

(xxxiv) Distributing 2 will complete the External Distribution.

No fractional shares of Controlled 2 will be issued in the External Distribution. Rather, all fractional shares of Controlled 2 stock that Distributing 2 shareholders otherwise would be entitled to receive will be aggregated by a transfer agent and, as soon as practicable following the effective time of the External Distribution, will be sold at the prevailing price on the New York Stock Exchange. Any Distributing 2 shareholder entitled to receive a fractional share of Controlled 2 stock will be entitled to receive a cash payment in an amount equal to the shareholder’s proportionate interest in the net proceeds from the open market sale.

Upon the External Distribution, the separation of Businesses A and B from Business C will be complete, except for limited continuing transactions. Distributing 2 and Controlled 2 plan to formalize various agreements governing a range of continuing transactions between their respective groups regarding provision of transitional services (the “Transitional Agreements”) and contingent obligations that arise before the External Distribution (the “Contingent Agreements”), as well as provision of certain services that are not core revenue or operational functions (collectively, the “Continuing Transactions”). These Continuing Transactions are intended to last until such time as Distributing 2 and Controlled 2 are able to perform these services on their own behalf, which is anticipated to be no later than 18-24 months beyond the External Distribution date, if not sooner in most cases.

Representations

FSub 1 Liquidation

- a) The FSub 1 Liquidation will qualify as a complete liquidation of FSub 1 under § 332, and no gain or loss will be recognized by FSub 1 or Distributing 2 under §§ 332(a) and 337(a).

Sub 1 Conversion

- b) The assets held by Sub 1 when it is contributed to Controlled 1 in the Internal Contribution will represent less than five percent of the fair market value of the gross assets held by Sub 1 immediately before the Sub 1 Conversion.
- c) The Sub 1 Conversion will qualify as a complete liquidation of Sub 1 under § 332, and no gain or loss will be recognized by Sub 1 or Distributing 1 under §§ 332(a) and 337(a).

Internal Contribution and Internal Distribution

- d) Any indebtedness owed by Controlled 1 (or any entity controlled directly or indirectly by Controlled 1) to Distributing 1 (or any entity controlled directly or indirectly by Distributing 1) after the Internal Distribution will not constitute stock or securities.
- e) No part of the consideration distributed to the Distributing 1 shareholders will be received as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 1.
- f) The five years of financial information submitted for Business A, conducted by Sub 4, Sub 6, and certain of their subsidiaries, and for Business C, conducted by Sub 5 and its subsidiaries, is representative of the present operations of each business, and there have been no substantial changes in either business since the date of the last financial statements submitted.
- g) Neither Business A, conducted by Sub 4, Sub 6 and certain of their subsidiaries, nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Reg. § 1.355-3) in whole or in part. Throughout the five-year period ending on the date of the Internal Distribution, Sub 4 will have been the principal owner of the goodwill and significant assets of Business A and will continue to be the principal owner following the Internal Distribution.
- h) Neither Business C, conducted by Sub 5 and its subsidiaries, nor control of any entity conducting this business will have been acquired during the five-year period ending on the date of the Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Reg. § 1.355-3) in whole or in part. Throughout the five-year period ending on the date of the Internal Distribution, certain of Sub 5's subsidiaries will have been the principal owners of the goodwill and significant assets of Business C and will continue to be the principal owners following the Internal Distribution.
- i) Apart from the Continuing Transactions, Distributing 1 (through Sub 4, Sub 6, and certain of their subsidiaries, all members of the Distributing 1 SAG) will continue the active conduct of Business A, independently and with its separate employees, following the Internal Distribution.
- j) Apart from the Continuing Transactions, Controlled 1 (through Sub 5 and its subsidiaries, all members of the Controlled 1 SAG) will continue the active

conduct of Business C, independently and with its separate employees, following the Internal Distribution.

- k) The Internal Distribution will be carried out to facilitate the External Distribution. The Internal Distribution is motivated in whole or substantial part by this corporate business purpose.
- l) The Internal Distribution will not be used principally as a device for the distribution of the earnings and profits of Distributing 1 or Controlled 1 or both.
- m) There is no plan or intention to liquidate any member of the Distributing 1 SAG engaged in Business A or any member of the Controlled 1 SAG engaged in Business C, to merge any member with any other entity, or to sell or otherwise dispose of the assets of any member after the Internal Distribution, except as part of the Proposed Transactions and for sales of assets in the ordinary course of business.
- n) The total adjusted basis and the fair market value of the assets transferred by Distributing 1 to Controlled 1 in the Internal Contribution will equal or exceed the sum of (i) the total amount of any liabilities assumed (as determined under § 357(d)) by Controlled 1 and (ii) the total amount of any money and the fair market value of any other property (within the meaning of § 361(b)) received by Distributing 1 and transferred to its creditors in connection with the reorganization.
- o) Any liabilities assumed (as determined under § 357(d)) by Controlled 1 in the Internal Contribution will have been incurred in the ordinary course of business and will be associated with the assets transferred.
- p) The total fair market value of the assets transferred to Controlled 1 in the Internal Contribution will exceed the sum of (i) the amount of any liabilities assumed (as determined under § 357(d)) by Controlled 1 in connection with the Internal Contribution, (ii) the amount of any liabilities owed to Controlled 1 by Distributing 1 that are discharged or extinguished in connection with the Internal Contribution, and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing 1 in connection with the Internal Contribution. The fair market value of the assets of Controlled 1 will exceed the amount of its liabilities immediately after the Internal Contribution.
- q) The aggregate fair market value of the assets Distributing 1 transfers to Controlled 1 in the Internal Contribution will equal or exceed the aggregate adjusted basis of those assets.

- r) Distributing 1 will neither accumulate its receivables nor make extraordinary payment of its payables in anticipation of the Internal Contribution and Distribution.
- s) No two parties to the Internal Distribution are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- t) Apart from debt arising in the Continuing Transactions, no intercorporate debt will exist between Distributing 1 (or any entity controlled directly or indirectly by Distributing 1) and Controlled 1 (or any entity controlled directly or indirectly by Controlled 1) at the time of, or after, the Internal Distribution, other than intercompany loans or other obligations that have arisen, or will arise, in the ordinary course of business.
- u) Apart from payments for certain services that may be rendered at cost under the Transitional Agreements, payments made in connection with the Continuing Transactions between Distributing 1 (or any entity controlled directly or indirectly by Distributing 1) and Controlled 1 (or any entity controlled directly or indirectly by Controlled 1) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length or terms and conditions comparable to those that would be arrived at by parties bargaining at arm's length.
- v) Immediately before the Internal Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see Treas. Reg. § 1.1502-13 and -14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; Treas. Reg. § 1.1502-13 as published in T.D. 8597). Further, any excess loss account that Distributing 1 has in the Controlled 1 stock or the stock of any direct or indirect subsidiary of Controlled 1 will be included in income immediately before the Internal Distribution to the extent required by regulations (see Treas. Reg. § 1.1502-19). At the time of the Internal Distribution, Distributing 1 will not have an excess loss account in the stock of Controlled 1 or the stock of any direct or indirect subsidiary of Controlled 1.
- w) For purposes of § 355(d), immediately after the Internal Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 1 stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Internal Distribution.

- x) For purposes of § 355(d), immediately after the Internal Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 1 stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Internal Distribution or (ii) attributable to distributions on Distributing 1 stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Internal Distribution.
- y) The Internal Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing 1 or Controlled 1 (including any predecessor or successor of any such corporation).
- z) Immediately after the transaction (as defined in § 355(g)(4)), either (1) if any person holds a 50-percent or greater interest (within the meaning of § 355(g)(3)) in any disqualified investment corporation (within the meaning of § 355(g)(2)), such person will have held such interest in such corporation immediately before the transaction, or (2) neither Distributing 1 nor Controlled 1 will be a disqualified investment corporation (within the meaning of § 355(g)(2)).
- aa) Neither Distributing 1 nor Controlled 1 will have been a U.S. real property holding corporation (as defined in § 897(c)(2)) at any time during the five-year period preceding the Internal Distribution, and neither will be a U.S. real property holding corporation immediately after the Internal Distribution.
- bb) There is no regulatory, legal, contractual, or economic compulsion or requirement that the Asset Contributions be made as a condition of the Internal Distribution. The fact that the value of Distributing 1 will decrease as a result of the Internal Distribution was not a consideration in the decision to contribute property to Distributing 1. The Internal Distribution is not contingent on there being contributed to Distributing 1 assets having a specified (or roughly specified) value.
- cc) The Asset Contributions together will qualify as a nonrecognition transfer under § 351.

- dd) Distributing 1's aggregate adjusted bases in the assets of FSub 7, as well as in the stock of FSub 10 and FSub 11, immediately after the transfer (determined without regard to § 362(e)(1)) will not exceed the aggregate value.

The Controlled 2 Reincorporation

- ee) The fair market value of the Controlled 2 stock received by Distributing 2 in the Controlled 2 Reincorporation will be approximately equal to the fair market value of the Distributing 1 stock deemed surrendered in the exchange.
- ff) Immediately after the Controlled 2 Reincorporation, Distributing 2 will own all of the outstanding Controlled 2 stock and will own such stock solely by reason of its having owned Distributing 1 stock immediately before the Controlled 2 Reincorporation.
- gg) Apart from the Recapitalization, and as contemplated by the corporate business purposes for the Proposed Transactions, Controlled 2 will not have at the time of the Controlled 2 Reincorporation, nor does it currently have, any plan or intention to issue additional shares of its stock following the Controlled 2 Reincorporation.
- hh) Immediately following consummation of the Controlled 2 Reincorporation, Controlled 2 will possess the same assets and liabilities, except for a nominal amount of assets held to facilitate its organization, as those possessed by Distributing 1 immediately before the Controlled 2 Reincorporation. Assets distributed to shareholders, assets used to pay expenses, and all redemptions and distributions (except for regular, normal dividends) made by Distributing 1 immediately preceding the Controlled 2 Reincorporation will, in the aggregate, constitute less than one percent of the net assets of Distributing 1. There will be no dissenting shareholders.
- ii) At the time of the Controlled 2 Reincorporation, Distributing 1 will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Distributing 1.
- jj) Controlled 2 will not have at the time of the Controlled 2 Reincorporation, nor does it currently have, any plan or intention to reacquire any of its stock issued in the Controlled 2 Reincorporation.
- kk) The liabilities of Distributing 1 to be assumed (within the meaning of § 357(d)) by Controlled 2 plus the liabilities, if any, to which the transferred assets are subject, were incurred by Distributing 1 in the ordinary course of its business and are associated with the assets to be transferred.

- ll) Distributing 2 will pay all expenses incurred in connection with the Controlled 2 Reincorporation.
- mm) At the time of the Controlled 2 Reincorporation, Distributing 1 will not be under the jurisdiction of a court in a title 11 or similar case within the meaning of § 368(a)(3)(A).

The Recapitalization

- nn) The Recapitalization will qualify as a reorganization under § 368(a)(1)(E).

The External Distribution

- oo) Any indebtedness owed by Controlled 2 (or any entity controlled directly or indirectly by Controlled 2) to Distributing 2 (or any entity controlled directly or indirectly by Distributing 2) after the External Distribution will not constitute stock or securities.
- pp) No part of the consideration distributed to the Distributing 2 shareholders will be received as a creditor, employee or in any capacity other than that of a shareholder of Distributing 2.
- qq) The five years of financial information submitted for Business A, conducted by Sub 4, Sub 6, and certain of their subsidiaries (all members of the Controlled 2 SAG), and for Business C, conducted by Sub 5 and its subsidiaries (all members of the Distributing 2 SAG), is representative of the present operations of each business, and there have been no substantial operational changes in either business since the date of the last financial statements submitted.
- rr) Neither Business A, conducted by Sub 4, Sub 6, and certain of their subsidiaries, nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the External Distribution in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Reg. § 1.355-3) in whole or in part. Throughout the five-year period ending on the date of the External Distribution, Sub 4 will have been the principal owner of the goodwill and significant assets of Business A and will continue to be the principal owner following the External Distribution.
- ss) Neither Business C, conducted by Sub 5 and its subsidiaries, nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the External Distribution in a transaction in

which gain or loss was recognized (or treated as recognized under Prop. Reg. § 1.355-3) in whole or in part. Throughout the five-year period ending on the date of the External Distribution, certain of the subsidiaries of Sub 5 will have been the principal owners of the goodwill and significant assets of Business C and will continue to be the principal owners following the External Distribution.

- tt) Apart from the Continuing Transactions, Controlled 2 (through Sub 4, Sub 6, and certain of their subsidiaries, all members of the Controlled 2 SAG) will continue the active conduct of Business A, independently and with its separate employees, following the External Distribution.
- uu) Apart from the Continuing Transactions, Distributing 2 (through Controlled 1 and its subsidiaries, all members of the Distributing 2 SAG) will continue the active conduct of Business C, independently and with its separate employees, following the External Distribution.
- vv) The External Distribution will be carried out to (i) improve positioning for Controlled 2 and Distributing 2 to accelerate growth based on the distinct corporate strategy, market opportunities, free cash flow, and customer relationships of each company; (ii) more efficiently allocate capital, which will allow Controlled 2 and Distributing 2 each to develop its own investment program without the constraints of a holding company, conglomerate structure; (iii) establish a distinct publicly traded stock for each company, which may be used as a “currency” to facilitate future acquisitions or to retain key employees; (iv) eliminate the risk to the combined businesses posed by recent modifications to the Regulations that limit Activities; and (v) sharpen the focus and strategic vision of the managements of Controlled 2 and Distributing 2. The External Distribution is motivated in whole or substantial part by these corporate business purposes.
- ww) The External Distribution will not be used principally as a device for the distribution of the earnings and profits of Controlled 2 or Distributing 2 or both.
- xx) There is no plan or intention to liquidate any member of the Controlled 2 SAG engaged in Business A or any member of the Distributing 2 SAG engaged in Business C, to merge any member with any other entity, or to sell or otherwise dispose of the assets of any member after the External Distribution, except for sales of assets in the ordinary course of business.
- yy) Apart from debt arising in the Continuing Transactions, no intercorporate debt will exist between Controlled 2 (or any entity controlled directly or indirectly by Controlled 2) and Distributing 2 (or any entity controlled directly or indirectly by Distributing 2) at the time of, or after, the External Distribution, other than

intercompany loans or other obligations that have arisen, or will arise, in the ordinary course of business.

- zz) Apart from payments for certain services that may be rendered at cost under the Transitional Agreements, payments made in connection with the Continuing Transactions between Controlled 2 (or any entity controlled directly or indirectly by Controlled 2) and Distributing 2 (or any entity controlled directly or indirectly by Distributing 2) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length or terms and conditions comparable to those that would be arrived at by parties bargaining at arm's length.
- aaa) For purposes of § 355(d), immediately after the External Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 2 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 2 stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the External Distribution.
- bbb) For purposes of § 355(d), immediately after the External Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 2 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 2 stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the External Distribution or (ii) attributable to distributions on Distributing 2 stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the External Distribution.
- ccc) The External Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Controlled 2 or Distributing 2 (including any predecessor or successor of any such corporation).
- ddd) Immediately after the transaction (as defined in § 355(g)(4)), either (1) no person will hold a 50-percent or greater interest (within the meaning of § 355(g)(3)) in Controlled 2 or Distributing 2, (2) if any person holds a 50-percent or greater interest (within the meaning of § 355(g)(3)) in any disqualified investment corporation (within the meaning of § 355(g)(2)), such

person will have held such interest in such corporation immediately before the transaction, or (3) neither Controlled 2 nor Distributing 2 will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

- eee) Neither Distributing 2 nor Controlled 2 will have been a U.S. real property holding corporation (as defined in § 897(c)(2)) at any time during the five-year period preceding the External Distribution, and neither will be a U.S. real property holding corporation immediately after the External Distribution.
- fff) The receipt by Distributing 2 shareholders of cash in lieu of fractional shares of Controlled 2 stock resulting from the open market sale of the fractional shares has been arranged solely for the purpose of avoiding the expense and inconvenience to Controlled 2 of issuing fractional shares and does not represent separately bargained-for consideration. It is intended that the total cash consideration received by the shareholders of Distributing 2 from the open market sale of their fractional shares will not exceed one percent of the total consideration that will be distributed in the External Distribution. It is also intended that no Distributing 2 shareholder will receive cash in an amount equal to or greater than the value of one full share of Controlled 2 common stock. Further, neither Controlled 2 nor Distributing 2 is aware of any overall plan (within the meaning of § 355(e)) to acquire an ownership interest in Controlled 2 through the purchase of the bundled Controlled 2 shares sold in connection with the issuance of cash in lieu of fractional shares.

Rulings

Based solely on the information submitted and the representations set forth above, we rule as follows:

The Internal Contribution and Internal Distribution

1. The Internal Contribution, followed by the Internal Distribution, will be a reorganization under § 368(a)(1)(D). Distributing 1 and Controlled 1 will each be “a party to a reorganization” within the meaning of § 368(b).
2. No gain or loss will be recognized by Distributing 1 on the Internal Contribution (§§ 361(a) and 357(a)).
3. No gain or loss will be recognized by Controlled 1 on the Internal Contribution (§ 1032(a)).
4. The basis of each asset received by Controlled 1 in the Internal Contribution will equal the basis of that asset in the hands of Distributing 1 immediately before the Internal Contribution (§ 362(b)).

5. The holding period of each asset received by Controlled 1 in the Internal Contribution will include the period during which Distributing 1 held that asset (§ 1223(2)).
6. No gain or loss will be recognized by Distributing 1 on the Internal Distribution (§ 361(c)(1)).
7. No gain or loss will be recognized by (and no amount will be included in the income of) Distributing 2 on the Internal Distribution (§ 355(a)(1)).
8. The aggregate basis of the Distributing 1 stock and the Controlled 1 stock in the hands of Distributing 2 immediately after the Internal Distribution will equal the aggregate basis of the Distributing 1 stock held by Distributing 2 immediately before the Internal Distribution, allocated between the stock of Distributing 1 and Controlled 1 in proportion to the fair market value of each immediately following the Internal Distribution in accordance with Treas. Reg. § 1.358-2(a)(2) (§ 358(b)(2) and (c)).
9. The holding period of the Controlled 1 stock received by Distributing 2 in the Internal Distribution will include the holding period of the Distributing 1 stock on which the Internal Distribution is made, provided the Distributing 1 stock is held as a capital asset on the date of the Internal Distribution (§ 1223(1)).
10. The earnings and profits of FSub 10 and FSub 11, to the extent attributable to Distributing 1 under §§ 1.1248-2 or 1.1248-3 (whichever is applicable), that were accumulated in tax years of such foreign corporations beginning after December 31, 1962, and during the period in which each such corporation was a CFC, will be attributable to such stock held by Sub 2. Treas. Reg. § 1.1248-1(a)(1).
11. The earnings and profits of FSub 10 and FSub 11, to the extent attributable to Sub 2 under §§ 1.1248-2 or 1.1248-3 (whichever is applicable), that were accumulated in tax years of such foreign corporations beginning after December 31, 1962, and during the period in which each such corporation was a CFC, will be attributable to such stock held by Sub 4. Treas. Reg. § 1.1248-1(a)(1).
12. Earnings and profits, if any, will be allocated between Distributing 1 and Controlled 1 in accordance with § 312(h) and Treas. Reg. §§ 1.312-10(a) and 1.1502-33(e)(3).

13. The Asset Contributions will not be treated as having been received by Distributing 1 in exchange for Controlled 1 stock distributed in the Internal Distribution.
14. Except for purposes of § 355(g), payments made between any of the Distributing 1 and Controlled 1 and their respective affiliates under Contingent Agreements regarding liabilities, indemnities, or other obligations that (i) have arisen or will arise for a taxable period ending on or before the Internal Distribution and (ii) will not become fixed and ascertainable until after the Internal Distribution, will be viewed as occurring before the Internal Distribution (*cf. Arrowsmith v. Commissioner*, 344 U.S. 6, 73 S. Ct. 71, 97 L. Ed. 6, 1952-2 C.B. 136 (1952) (tax character of later transaction will derive from earlier, related transaction); Rev. Rul. 83-73, 1983-1 C.B. 84).
15. Following the Internal Distribution, Controlled 1 will not be a successor of Distributing 1 for purposes of § 1504(a)(3). Therefore, Controlled 1 and its direct and indirect subsidiaries that are “includible corporations” (under § 1504(b)) and satisfy the ownership requirements of § 1504(a)(2) will be members of an affiliated group of corporations entitled to file a consolidated U.S. Federal income tax return with Controlled 1 as the common parent.

The Controlled 2 Reincorporation

16. The Controlled 2 Reincorporation will qualify as a reorganization under § 368(a)(1)(F). Distributing 1 and Controlled 2 will each be “a party to a reorganization” under § 368(b).
17. No gain or loss will be recognized by Distributing 1 in the Controlled 2 Reincorporation (§§ 361(a), (c), and 357(a)).
18. No gain or loss will be recognized by Controlled 2 in the Controlled 2 Reincorporation (§ 1032(a)).
19. The basis of each asset received by Controlled 2 in the Controlled 2 Reincorporation will equal the basis of that asset in the hands of Distributing 1 immediately before the Controlled 2 Reincorporation (§ 362(b)).
20. The holding period of each asset received by Controlled 2 in the Controlled 2 Reincorporation will include the period during which Distributing 1 held that asset (§ 1223(2)).
21. No gain or loss will be recognized by Distributing 2 in the Controlled 2 Reincorporation (§ 354(a)).

22. The basis of the Controlled 2 common stock received by Distributing 2 will equal the basis of the Distributing 1 stock exchanged therefore (§ 358(a)).
23. The holding period of the Controlled 2 stock received by Distributing 2 in the Controlled 2 Reincorporation will include the holding period of the Distributing 1 stock exchanged therefor, provided the Distributing 1 stock is held by Distributing 2 as a capital asset on the date of the Controlled 2 Reincorporation (§ 1223(1)).
24. Controlled 2 will succeed to and take into account the tax attributes of Distributing 1 described in § 381(c) (§ 381(a) and Treas. Reg. § 1.381(a)-1), subject to the conditions and limitations specified in §§ 381, 382, 383, and 384 and the Treasury Regulations thereunder.
25. The taxable year of Distributing 1 will not close on the date of the Controlled 2 Reincorporation, and such tax year will continue in the name of Controlled 2 (Treas. Reg. § 1.381(b)-1; Rev. Rul. 57-276, 1957-1 C.B. 126).

The External Distribution

26. No gain or loss will be recognized by Distributing 2 on the External Distribution (§ 355(c)).
27. No gain or loss will be recognized by (and no amount will be included in the income of) any shareholder of Distributing 2 on the External Distribution (§ 355(a)(1)).
28. The aggregate basis of the Distributing 2 stock and the Controlled 2 stock in the hands of each shareholder of Distributing 2 (including any fractional share interest in Controlled 2 to which the shareholder may be entitled) immediately after the External Distribution will equal the aggregate basis of the Distributing 2 stock held by the shareholder immediately before the External Distribution, allocated between the stock of Distributing 2 and Controlled 2 in proportion to the fair market value of each immediately following the External Distribution in accordance with Treas. Reg. § 1.358-2(a)(2) (§ 358(b)(2) and (c)).
29. The holding period of the Controlled 2 stock received by each shareholder of Distributing 2 in the External Distribution (including any fractional share interest in Controlled 2 to which the shareholder may be entitled) will include the holding period of the Distributing 2 stock on which the External Distribution is made, provided the Distributing 2 stock is held by the shareholder as a capital asset on the date of the External Distribution (§ 1223(1)).
30. Earnings and profits, if any, will be allocated between Distributing 2 and Controlled 2 in accordance with § 312(h) and Treas. Reg. § 1.312-10(b).

31. The receipt by Distributing 2 shareholders of cash in lieu of fractional shares of Controlled 2 stock will be treated for U.S. Federal income tax purposes as if the fractional shares had been distributed to the Distributing 2 shareholders as part of the External Distribution and then had been disposed of by such shareholders for the amount of such cash in a sale or exchange. The gain (or loss), if any (determined using the basis allocated to the fractional shares in ruling (28) and the holding period attributed to the fractional shares in ruling (29)), will be treated as a capital gain (or loss), provided the stock was held as a capital asset by the selling shareholder (§ 1222).

Caveats

No opinion is expressed about the tax treatment of the Proposed Transactions under other provisions of the Code and regulations or on the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transactions that are not specifically covered by the above rulings. In particular, this office has not reviewed any information pertaining to and has made no determination regarding:

- (i) Whether the Distributions satisfy the business purpose requirement of Treas. Reg. § 1.355-2(b);
- (ii) Whether the Distributions are used principally as a device for the distribution of earnings and profits of the distributing corporations or the controlled corporations or both; and
- (iii) Whether the Distributions and an acquisition or acquisitions are part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii).

In addition, no opinion is expressed regarding the Federal income tax treatment of (i) the FSub 1 Liquidation; (ii) the Sub 1 Conversion; (iii) the Recapitalization; or (iv) payments for certain services that may be rendered at cost under the Transitional Agreements.

Procedural Statements

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this ruling letter must be attached to any income tax return to which it is relevant. Alternatively, any taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to the returns that provides the date and control number of this letter ruling.

In accordance with the power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representatives.

Sincerely,

Gerald B. Fleming
Senior Technician Reviewer, Branch 2
Associate Chief Counsel (Corporate)